

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

Adopt Title 10, California Code of Regulations, Chapter 5, Subchapter 4.3, Article 1, Section 2614. Governing Procedure for Noncompliance Hearings

SUBCHAPTER 4.3 Procedures for Noncompliance Hearings
Article 1. Governing Procedure for Noncompliance Hearings.

CDI File No. RH05048173

Date: July 14, 2006

SUBJECT OF HEARING

Notice is hereby given that the California Insurance Commissioner (the Commissioner) proposes to adopt the regulation described below after considering comments from the public. The Commissioner proposes to add to Title 10, California Code of Regulations, Chapter 5, Subchapter 4.3, Governing Procedure for Noncompliance Hearings. The proposed regulation will implement procedures for hearings conducted pursuant to California Insurance Code sections 1858, 1858.01, 1858.1 and 1858.2.

AUTHORITY AND REFERENCE

Per Government Code section 11349(b) "Authority" means the provision of law which permits or obligates the agency to adopt a regulation. The authority for the proposed regulation is the express authority provided by Government Code section 11400.20 which states that an agency may adopt interim or permanent regulations to govern an adjudicative proceeding

"Reference" means the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific when adopting a regulation. The following statutes are referenced as being made specific by the proposed regulation. The proposed regulation is making specific California Insurance Code sections 1858, 1858.01, 1858.1 and 1858.2

HEARING DATES AND LOCATIONS

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation on the following dates at the following locations.

September 7, 2006
10:00 a.m.
45 Fremont St. 22nd Floor Hearing Room
San Francisco CA 94105

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS: CONTACT PERSONS

All persons are invited to present oral and/or written comments at the scheduled hearing. Written comments not presented at the hearing must be addressed to the following contact person:

Lara Sweat, Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4192
sweatl@insurance.ca.gov

Questions regarding the hearing, comments or the substance of the proposed action should be addressed to the above contact person. If the contact person is unavailable, inquiries may be sent to the backup contact person:

Antonio Celaya, Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4117
celayaa@insurance.ca.gov

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Commissioner, care of the contact person at the address listed above, by no later than **5:00 p.m. on September 7, 2006**. Any materials received after that time will not be considered.

COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION

The Commissioner will accept and strongly encourages written comments transmitted by e-mail, provided they are sent to the following e-mail address: sweatl@insurance.ca.gov. The Commissioner also requests a hard copy of the comments electronically submitted. Please place the following in the subject heading of the e-mail: **CDI File No. RH05048173**. Microsoft Word and "PDF" documents may be attached to e-mails. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of **Lara Sweat** using the following fax number: **(415) 904-5490**. Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person for this hearing in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of subchapter 4.5, title 10 of the California Code of Regulations, in connection with their participation in this matter. Persons interested in inquiring about the appropriate procedures should contact the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST

Summary of Existing Law

California Insurance Code sections 1858, 1858.01, 1858.1 and 1858.2 provide that the Commissioner shall hold a public hearing when a violation of Chapter 9 of the California Insurance Code is alleged pursuant to a public complaint, or after examination of an insurer. However, there are no procedures identified in the California Insurance Code stating how such public hearing shall be conducted or what procedures will apply. To date, public hearings conducted pursuant to those California Insurance Code sections have been conducted under Title 10 of the California Code of Regulations, Subchapter 4.5, Article 1, section 2615 et seq. which provide procedures for adjudicative hearings other than those subject to the provisions of Chapter 5 of the Government Code or where other regulations explicitly set forth a procedure for a hearing. The existing regulations set forth only the general requirements for a hearing. There are no time lines or specific requirements imposed which has created inconsistent procedures in these hearings.

The Department does have in place regulations governing rate hearings and worker's compensation hearings but nothing for noncompliance hearings. Pursuant to the discretion granted to the Department by the APA, the Department now seeks to adopt procedural regulations for noncompliance hearings.

POLICY STATEMENT OVERVIEW

The Commissioner has determined that the lack of specific procedural guidelines for noncompliance hearings is problematic both for the Department and for the public. The lack of

certainty and guidance in noncompliance hearings has created delay and confusion as the procedures are being determined on a case by case basis. By providing a consistent framework for noncompliance proceedings, these regulations provide consistency but also allow flexibility as needed.

These regulations are also necessary to eliminate confusion and preserve resources that might otherwise be spent arguing about appropriate procedure.

Further, Government Code section 11425.10 states that a copy of the governing procedure shall be made available to persons to which agency action is directed. These regulations are necessary to clarify the general governing procedure for Department of Insurance noncompliance hearings.

Effect of Proposed Action

As outlined in detail above the proposed regulation will make specific the California Insurance Code sections relating to noncompliance hearings. The proposed regulation will provide for greater ease and consistency in conducting noncompliance hearings. As stated above these regulations will also ultimately preserve resources by preventing unnecessary relitigation over hearing procedures on a case by case basis.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

This proposed regulation does not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO ANY STATE AGENCY

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH OTHER STATES

The Commissioner has made an initial determination that adoption of the proposed regulation will not have a significant impact on reporting requirements, recordkeeping requirements or other compliance requirements.

The Commissioner has made an initial determination that adoption of the proposed regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed amendment simply clarifies and makes specific existing hearing procedures.

However, the Commissioner invites comment on proposed alternatives designed to lessen any adverse economic impact on business while ensuring compliance with all applicable legal requirements.

The types of businesses affected by the proposed regulation are insurers and advisory organizations and rating organizations subject to the requirements of Chapter 9 of the California Insurance Code.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON JOBS IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action. The Commissioner, however, invites public comment on alternatives to the regulation.

Performance standards were considered. The objective identified was fairness and consistency in noncompliance hearings. As such, the subject matter does not lend itself to performance standards. Further, the enabling statute, Government Code Section 14000.20 requires regulations that specifically identify the governing procedure.

Finally, the Commissioner continues to study alternatives.

IMPACT ON SMALL BUSINESS

The matters proposed herein will only affect insurance companies, and rating and advisory organizations, and therefore will not affect small business. (Gov. Code Section 11342.610, subd. (b), para. (2).)

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulation.

TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information contained in the rulemaking file, is available for inspection and copying **by prior appointment** at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Written requests for the rulemaking file or questions regarding this proceeding should be directed to the contact persons listed above.

FINAL STATEMENT OF REASONS

Upon **written or e-mail** request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Near the bottom of the page, under "Select a Topic" click on "Consumers". Scroll down to the heading "Regulatory Activity." In this section, scroll down until you see the subheading "Proposed Regulations – Search." Click on the "Proposed Regulations-Search" link. When the "Search" screen appears, you may choose to find the documents by either conducting a search or by browsing for them by name.

To search, enter the Department's regulation file number for these regulations in the "Search for" field. Alternatively, search using as your search term the California Insurance Code number of a code section that the regulations implement (for instance, "1858"), or search by key word

(“noncompliance” for example). Then, click on the “submit” button to display links to the various filing documents.”

To browse, click on the “Browse All Regulations” button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the “Regulations for Noncompliance Hearings” link, and click it. Links to the documents associated with these regulations will then be displayed.

AVAILABILITY OF MODIFIED TEXT OF REGULATION

If the regulations adopted by the Department differ from but are sufficiently related to the original text, the Department will make the modified text available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

Dated: July 7, 2006

JOHN GARAMENDI
Insurance Commissioner

By: _____
Lara Sweat
Staff Counsel